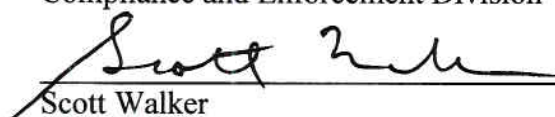


REQUEST FOR APPROVAL

To: Ted Rauh, Deputy Director
Compliance and Enforcement Division

From:



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Reviewed By: Steve Levine, Legal Office
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Prepared On: April 28, 2011

Subject: **APPROVAL OF THE PETALUMA RIVER DISPOSAL SITES
CLEANUP PROJECT, SONOMA COUNTY, SOLID WASTE
DISPOSAL AND CODISPOSAL SITE CLEANUP PROGRAM
(SOLID WASTE DISPOSAL TRUST FUND, FY 2010/11)**

Requested Action: Pursuant to the Solid Waste Disposal and Codisposal Site Cleanup Program (Program), Department of Resources Recycling and Recovery (CalRecycle) staff have completed an evaluation and recommend approval of the CalRecycle-managed cleanup of the nine illegal disposal sites containing abandoned vessels and other solid waste along the Petaluma River and San Antonio Creek.

Time Factor: Decision required no later than May 1, 2011.

Options: The Deputy Director may decide to:

1. Approve the proposed project;
2. Disapprove the project; or
3. Direct staff to provide additional information and bring the project back for future consideration.

Recommendation: Staff recommend Option 1.

Abandoned Vessels Background: Abandoned and derelict vessels and related abandoned boating structures are a pervasive environmental and public safety problem in coastal and inland waterways of California. The value of vessels decreases with age while the cost of maintaining the vessel in operating condition and the costs of storing or docking the vessels increase. The result is that vessel owners are sometimes unable to pay or decide not to pay to operate, maintain, and store their vessels. The cost to correctly destroy a vessel is over \$500 for just small vessels and increases significantly for larger commercial vessels. Vessel owners sometimes illegally abandon the vessels by leaving them at berths or docks while failing to pay the storage costs; running the vessels aground on the shores of public waterways; or sinking the vessels in public waterways.

Abandoned and derelict vessels are threats to public health and safety and the environment in communities along California's coastal and inland waterways. Abandoned vessels can impact water quality due to hazardous pollutants they contain, including oil, antifreeze, gasoline, asbestos, anti-fouling paints, heavy metals, PCBs, sewage, etc. In addition, as vessels deteriorate they become sources of debris that washes onto the shore or remain a water hazard interfering with aquatic and marine life. Finally, vessels are typically abandoned on or very near shorelines where the pollutants and debris can impact water quality and people and present attractive nuisances for additional dumping from the shore. Marinas and marine related businesses that have discontinued operations also leave sunken docks, metal pilings, cranes, barges and industrial engines that become illegal solid waste disposal sites.

The California Department of Boating and Waterways, recognizing this issue and the significant fiscal burden imposed on local agencies statewide, created the Abandoned Watercraft Abatement Program (AWAP) in 1997. The AWAP funding comes from registration fees on recreational boats, and the funding is therefore restricted to abatement projects involving recreational boats. Thus, AWAP funds cannot be used to remove abandoned commercial boats, which are boats/ships registered in California as vessels involved in commercial enterprises, boats documented by the U.S. Coast Guard as commercial boats either from California or other states, and all boats without out of country documentation. While the U.S. Coast Guard does have resources available to deal with vessels that present navigational hazards in major waterways or that are discharging hazardous pollutants to the watercourse presenting an imminent threat to public health and safety and/or the environment, there are no resources for removing commercial vessels once they become abandoned and lie derelict along the shoreline or abandoned in a harbor. Likewise, there is no vessel-related funding available to remove abandoned materials related to the marine industries. There is an ongoing series of meetings between federal, state, and local agencies to identify and implement a program and funding source for abatement of commercial marine vessels, but the issue remains unresolved.

Proposed Remediation Pilot Project Scope: The Program was requested by the Sonoma County Sheriff Marine Unit with support from U.S. EPA, Region IX, to remove up to ten abandoned vessel sites along the waters of the Petaluma River and San Antonio Creek. Cleanup staff and U.S. EPA, Region IX staff have agreed to enter into a joint venture to remove the abandoned vessels and debris along the inland waterways of the Petaluma River to prevent further environmental degradation. The U.S. EPA, Region IX, is the designated federal agency responsible for this inland waterway and has federal jurisdiction for all releases. CalRecycle and U.S. EPA will participate in a joint response to combine available resources in assessing and removing abandoned vessels and debris on the Petaluma River.

Project cost will be split depending on the type of vessel and/or debris, location, and hazardous materials. The engineer's cost estimate for both agencies is \$390,500 each with a 10 percent contingency. The joint task force is proposing removal action at nine sites initially. The locations of the sites are as follows:

Site 1 and Site 2

Location: Lat: 38° 6'57.89"N / Long 122°30'19.29"W

Scope of U.S. EPA work: Raise two sunken vessels. Assess and remove hazardous materials, transport to staging for disposal.

Estimated Costs: U.S. EPA \$125,000 / CalRecycle \$40,000

Site 3

Location: Lat: 38° 7'37.93"N / Long 122°30'37.02"W

Scope of U.S. EPA work: One abandoned vessel. Assess and remove hazardous materials, transport to staging for disposal.

Estimated Costs: U.S. EPA \$30,000 / CalRecycle \$20,000

Site 4

Location: Lat. 38°10'13.24"N / Long. 122°33'12.20"W

Scope of U.S. EPA work: One abandoned barge. Assess and remove hazardous materials, transport to staging for disposal.

Estimated Costs: U.S. EPA \$100,000 / CalRecycle \$35,000

Site 5

Location: Lat. 38°13'4.64"N / Long. 122°35'34.65"W

Scope of U.S. EPA work: One abandoned vessel. Assess and remove hazardous materials, transport to staging for disposal.

Estimated Costs: U.S. EPA \$15,000 / CalRecycle \$5,000

Site 6

Location: Lat. 38°13'48.64"N / Long. 122°37'30.30"W

Scope of U.S. EPA work: One abandoned vessel and three debris sites. Assess and remove hazardous materials only. Vessel and debris will be removed by CalRecycle.

Estimated Costs: U.S. EPA \$10,000 / CalRecycle \$125,000

Site 7

Location: Lat. 38°13'51.47"N / Long. 122°37'31.71"W

Scope of U.S. EPA work: Assess and remove hazardous materials only. Debris site only, CalRecycle will remove.

Estimated Costs: U.S. EPA \$5,000 / CalRecycle \$50,000

Site 8

Location: Lat. 38°14'2.76"N / Long. 122°37'50.27"W

Scope of U.S. EPA work: One abandoned barge and debris. Assess and remove hazardous materials, transport to staging for disposal.

Estimated Costs: U.S. EPA \$40,000 / CalRecycle \$40,000

Site 9

Location: Lat. 38°13'47.37"N / Long. 122°37'40.15"W

Scope of U.S. EPA work: Potential four abandoned vessels. Assess and remove hazardous materials, transport to staging for disposal.

Estimated Costs: U.S. EPA \$30,000 / CalRecycle \$40,000

Site Prioritization: Because of the location of the vessels in the Petaluma River, and the pollution and public safety threat posed by the vessels, the sites are priority category A1. Priority A1 is a suspected condition of pollution or nuisance from solid waste based on comparison with state minimum standards with significant residential, industrial, park, recreation, or environmentally sensitive areas within 1,000 feet.

California Environmental Quality Act (CEQA): Program staff has reviewed the proposed project and determined that it is categorically exempt per the Class 8 exemption (Title 14, California Code of Regulations, §15308: Actions by Regulatory Agencies for Protection of the Environment). Compliance with CEQA requirements will be made with a Notice of Exemption filed by the Program staff.

Enforcement Actions and Cost Recovery: Based on discussion with the Department's State and Local Illegal Dumping Enforcement Task Force, abandoned vessels in public waters of the state are a subset of the overall state illegal dumping problem. In 1997 the Board approved a

cleanup project under the Program that was completed to remove abandoned vessels impacting Redwood Creek in San Mateo County. In November 2009, the Board (CalRecycle soon thereafter) approved a pilot project under the Program that was completed to remove abandoned vessels impacting Contra Costa County. In December, 2010, CalRecycle approved a pilot project under the Program that was completed to remove abandoned vessels impacting Sonoma County.

The Program addresses cleanup of solid waste disposal and codisposal sites, in accordance with Public Resources Code (PRC) Section 48020(2)(b). Under the Integrated Waste Management Act ("IWMA"), a "disposal site" is defined as "the place, location, tract of land, area, or premises in use, intended to be used, or which has been used for the disposal of solid wastes." (PRC Sec. 40122) The deposition of solid waste into waters of the state is addressed in the Fish and Game (F&G) Code, which makes no site specific delineations but rather collectively refers to the "waters of this state" (F&G Code Secs. 5650 and 5652). Program staff submits that as the abandoned vessels and the solid wastes contained therein are located at discrete locations (i.e., sites) upon submerged lands, these lands constitute disposal sites under the IWMA. Accordingly, the Department has instituted a series of pilot projects to explore the efficacy of utilizing Program resources for these types of sites. The submerged lands involved in this situation include the inland waterways of the Petaluma River and San Antonio Creek. Thus in approving this item, the Department would be furthering its endorsement of this interpretation in these pilot projects and continuing to extend the IWMA's jurisdiction to discrete submerged lands upon which solid waste has been deposited. Such an extension may also have implications on enforcement authority (as well as potential jurisdictional issues with other agencies), in that solid waste local enforcement agencies and/or the Department may be considered amongst the agencies with regulatory responsibility for such lands.

The lead agency for enforcement of state laws pertaining to abandoned vessels is local law enforcement (in this case the Sonoma County Sheriff Marine Unit) under Sections 510 through 527 of the Harbors and Navigation Code (HNC). Owners of vessels that are abandoned may be subject to fines and confiscation and salvage or sale by local agencies if not properly removed by the owner. In many cases no responsible parties can be identified through registration or other information. With respect to the illegal disposal sites in this item, the Sonoma County Sheriff Marine Unit has agreed to enforce the HNC to identify vessel owners responsible for the disposal and through prosecution or voluntary efforts effect removal of the vessels by the owners. It is anticipated that no responsible party will be identifiable for the majority of the vessels proposed in this Item. In cases where a responsible party is identified, Department staff will work with the Sonoma County Sheriff Marine Unit to ensure cost recovery is pursued to the extent practicable from the private owners. Since these sites are located within public lands (i.e., the waters of the

State of California), dedicated and maintained for recreational, and ecological purposes for the public benefit, cost recovery need not be pursued against the public agency landowner.

Pursuant to PRC Code Section 48021(c), the County could have applied for a grant from the Department to abate the conditions at these sites; however, the County has requested a Department-managed cleanup in lieu of a grant, in accordance with PRC 48021(b)(2), on the grounds that the County does not have sufficient financial and staff resources to implement this project in a timely manner and there are no available grant funds at this time.

Fiscal Impacts: The Department-managed project will be performed on a time-and-materials basis under the Program's Northern California remediation contract (DRR10008). The Program's contractor has scheduled a site visit with Program staff for the week of April 11, 2011. Preliminary costs for this project are estimated at \$390,500 for CalRecycle and \$390,500 for U.S. EPA with a 10 percent contingency for both agencies. Actual costs may vary depending on a variety of factors including, but not limited to the quantities and/or types of materials encountered, amount of sediment, market forces, tide, river flows, the required timeframes for cleanup, and competitive bids from subcontractors.

Funding for the project will be derived from previously encumbered funds from the Solid Waste Disposal Trust Fund in the Program's Northern California remediation contract (DRR10008). The contract currently has \$777,000 in available funds from the Solid Waste Disposal Trust Fund and is adequately funded to complete this project.

Funding Information:

Fiscal Year	Fund Source	Amount Available	Amount to Fund Item	Amount Remaining	Line Item
2010/2011	Solid Waste	\$777,000	\$390,500	\$386,500	Contract

Support: Cleanup assistance was requested from the Sonoma County Sheriff, California Department of Fish and Game, U.S. EPA, Region IX, who are working cooperatively with the Department. The U.S. EPA has committed to a significant cost sharing for this project.

Opposition: Staff has not received any written opposition at the time this document was submitted for approval.

FINDINGS:

On the basis of the information and analysis in this Request for Action, the Department hereby approves this project under the Solid Waste Disposal and Codisposal Site Cleanup Program.

In addition, the Department directs staff to prepare and file a Notice of Exemption for the project with the State Clearinghouse.



Ted Rauh, Deputy Director
Compliance and Enforcement Division

APRIL 28, 2011

Date

